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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re	Case No. BK- 23-10423-mkn
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CASH CLOUD, INC., dba COIN CLOUD,	Chapter 11
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Debtor.	
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CASH CLOUD, INC., dba COIN CLOUD,	Adv. Case No. 23-01015-MKN
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Plaintiff,	
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v.	<u>PLAINTIFF'S REPLY IN SUPPORT</u>
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Lux Vending, LLC d/b/a Bitcoin Depot,	<u>OF ITS MOTION FOR TEMPORARY</u>
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Defendant.	<u>RESTRANDING ORDER</u>
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Hearing Date: April 20, 2023 Hearing Time: 10:30 a.m.	
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1 Cash Cloud, Inc. d/b/a Coin Cloud (“Cash Cloud,” “Plaintiff,” or “Debtor”), debtor and
 2 debtor-in-possession in the above-captioned Chapter 11 case (the “Chapter 11 Case”), by and through
 3 its undersigned counsel, Fox Rothschild LLP, and The Jimmerson Law Firm, P.C., hereby files this
 4 Reply In Support of Its Motion for Temporary Restraining Order (the “Reply”). This Reply is based
 5 upon the pleadings in this action, the following memorandum of points and authorities, and any
 6 arguments made by counsel during any hearing on the Cash Cloud’s Motion for Temporary
 7 Restraining Order (the “Motion”).

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 Plaintiff and Debtor, Cash Cloud Inc., respectfully asks this Court to enjoin Defendant Lux
 11 Vending, LLC d/b/a Bitcoin Depot (“Defendant” or “Bitcoin Depot”) from violating the automatic
 12 stay and from tortiously interfering with Cash Cloud’s contractual relationships by soliciting Cash
 13 Cloud’s hosts (through the use of false statements or otherwise). As detailed in the initial moving
 14 papers, Cash Cloud is a business that provides the general public the means to buy and sell digital
 15 currency (e.g., Bitcoin and other cryptocurrencies) using ATM-style digital currency kiosks. Cash
 16 Cloud operates thousands of kiosks throughout the United States and Brazil, installed in some of the
 17 largest convenience and grocery store chains as well as prestigious malls.

18 Since the filing of the bankruptcy petition on February 7, 2023, Defendant (a direct
 19 competitor to Cash Cloud) has been improperly attempting to take over Cash Cloud’s host
 20 locations—host locations where Cash Cloud has exclusive rights to operate digital currency kiosks
 21 as provided in its host contracts. *See* McAlary Decl. at ¶ 11. Indeed, on February 8, 2023, the day
 22 after the bankruptcy petition was filed, Defendant began contacting Cash Cloud’s hosts in an effort
 23 to persuade them to switch from Cash Cloud to Defendant. *See* Exhibit 3.¹ In these communications,
 24 Defendant made several materially false statements concerning Cash Cloud. This effort by
 25 Defendant has not ceased. As recently as March 10, 2023, Defendant has continued to contact Cash
 26 Cloud’s hosts, making even more false statements to them. *See* Exhibits 5, 6. By way of example

27
 28 ¹ The exhibits cited to herein are the exhibits filed along with the initial moving papers.

1 only, Defendant has made the following false statements to Cash Cloud's exclusive hosts:

- 2 • Cash Cloud "was unable to reorganize its debts." Exhibit 3.
- 3 • Cash Cloud "is out of business." Exhibit 4.
- 4 • Defendant "wanted to replace Cash Cloud's machines with [Defendant's] and take over
5 the rent agreement." *Id.*
- 6 • "[Cash Cloud's] machines [are] online, but customers not receiving their crypto." Exhibit
7 5.
- 8 • "[Cash] Cloud [is] being completely unresponsive to the host after not being paid for
9 months." *Id.*
- 10 • They [Cash Cloud] stated they will resume payments, do it for a month or two, and then
11 stop paying the retailers again. *Id.*

12 These statements are false and dangerous to Cash Cloud's business, its reputation and
13 goodwill. As explained by Cash Cloud's CEO, Christopher McAlary, a host who believes
14 Defendant's false statements may switch to Bitcoin Depot fearing (1) a potential dispute with a
15 customer who may not receive the cryptocurrency he/she purchased; (2) a non-responsive kiosk
16 operator; and/or (3) that Cash Cloud would stop making host payments in the near future. McAlary
17 Decl. at ¶ 22. Indeed, the false statement about customers not receiving the digital currency they
18 purchased is particularly harmful to Cash Cloud as it not only puts Cash Cloud's host relationships
19 at risk, but also puts end-user relationships and Cash Cloud's goodwill at risk. *Id.* at ¶ 23. Cash
20 Cloud has invested substantial time and resources in building and cultivating its relationships with
21 its hosts, the value of which cannot be reduced to a dollar figure and the loss of which would
22 represent irreparable harm to Cash Cloud. *Id.* at ¶ 26. In an effort to avoid such irreparable harm,
23 Cash Cloud has brought the Motion seeking a TRO.

24 While Defendant opposes the Motion, it does not oppose the Motion for the reasons that the
25 Court might expect.

1 In the Opposition,² Defendant does not deny any of its aforementioned conduct. Defendant
 2 does not dispute that it made the statements to Cash Cloud's hosts after the filing of the bankruptcy
 3 petition. Defendant does not dispute that the statements made to Cash Cloud's hosts are false. Most
 4 importantly, Defendant does not tell this Court that it will stop soliciting Cash Cloud's exclusive
 5 hosts (or otherwise making false statements to them) while the bankruptcy is pending. In fact,
 6 Defendant characterizes its behavior as "ordinary course commercial conduct." Opp. at 11.

7 Defendant asks this Court to deny the Motion, claiming that "Cash Cloud fails to identify
 8 any specific Host Agreement that Bitcoin Depot actually disrupted." Opp. at 7. Notwithstanding
 9 that Cash Cloud supplied evidence that there has been disruption of host relationships by Bitcoin
 10 Depot (including post-petition host contract terminations) (*see* McAlary Decl. at ¶¶ 25, 28), even if
 11 Defendant "has not converted a single Cash Cloud host to switch from Cash Cloud to Bitcoin Depot"
 12 as Defendant claims (*see* Buchanan Decl. at ¶ 6), that is hardly a defense to the Motion. What
 13 Defendant is telling this Court is effectively as follows: "This Court cannot enjoin us from soliciting
 14 and/or making false statements to Cash Cloud's exclusive hosts because the false statements haven't
 15 worked yet and we have not been successful in getting a Cash Cloud host to switch from Cash Cloud
 16 to us."

17 Nonsense.

18 That Defendant argues that it has not yet been successful in its improper efforts is not a
 19 license to continue to tortiously interfere with Cash Cloud's exclusive host contracts and to violate
 20 the automatic bankruptcy stay. Indeed, as stated by the Ninth Circuit in *Shell Offshore, Inc. v.*
Greenpeace, Inc., 709 F.3d 1281, 1288 (9th Cir. 2013), "Requiring a showing of actual injury would
 22 defeat the purpose of the preliminary injunction, which is to prevent an injury from occurring." *Id.*
 23 (affirming preliminary injunction). For this reason, Defendant's arguments concerning an alleged
 24 absence of damages should be rejected and the Motion should be granted.

25 Defendant's only other principal argument in its Opposition is its claim that making the false
 26 statements to Cash Cloud's hosts does not violate the automatic bankruptcy stay, citing to *In re*

27 ² Defendant Lux Vending, LLC d/b/a Bitcoin Depot's Opposition to Plaintiff's Motion for Temporary
 28 Restraining Order (the "Opposition") is cited to herein as "Opp. at ____."

1 *Windstream Holdings, Inc.*, No. 21-cv-4552 (CS), 2022 WL 5245633, at *8 (S.D.N.Y. Oct. 6, 2022).
 2 See Opp. at 10. Defendant is in error. What Defendant conspicuously leaves out of the Opposition
 3 is the *Windstream* court's repeated consideration of whether or not the contracts at issue were
 4 exclusive. As detailed below, the court in *In re Windstream* held that where the customer contracts
 5 in question did not have exclusivity provisions, the effort to poach customers was not a violation of
 6 the automatic stay. By contrast, the *Windstream* court expressly acknowledged and cited authority
 7 supporting the contention that interference with a debtor's exclusive contracts is a violation of the
 8 bankruptcy stay. *Id.* at *8 (citing *In re Golden Distrib., Ltd.*, 122 B.R. 15, 20 (Bankr. S.D.N.Y.
 9 1990)). Because the host contracts that Defendant is looking to "take over" are exclusive contracts,
 10 interference with the same is a violation of the automatic bankruptcy stay. *Id.*; see also *In re Sherlock*
 11 *Homes of W.N.Y., Inc.*, 246 B.R. 19, 24-26 (Bankr. W.D.N.Y. 2000). Accordingly, there is a
 12 substantial likelihood that Cash Cloud will succeed on the merits of its claim for violation of the
 13 automatic bankruptcy stay and the Motion should be granted.

14 Knowing that there is no real defense to its behavior, Defendant's Opposition does not
 15 substantively address any of its post-petition conduct at issue in the Motion. Indeed, despite
 16 dedicating almost a third of its responsive brief to the section entitled, "Relevant Facts," nowhere in
 17 that section does Defendant mention any of the communications which form the basis of the Motion,
 18 let alone substantively address them. By contrast, Defendant spends the bulk of this section
 19 discussing the October 4, 2022 decision from the court in Canada in a mistaken effort to deflect from
 20 the issues presently before this Court and otherwise cast aspersions on Cash Cloud. See Opp. at 4-
 21 5. In fact, rather than explain how the October 4, 2022 decision relates to its post-petition conduct
 22 from February 8, 2023 going forward, Defendant purports to provide a description of the Canadian
 23 court's order which denied the application for a preliminary injunction to require BitAccess to
 24 reactivate the software used to operate Cash Cloud's kiosks. In a transparent effort to criticize Cash
 25 Cloud, Defendant concludes this discussion with the statement, "Remarkably, Plaintiff fails to
 26 provide any of this detail in its Complaint and Motion," as if such detail were necessary for the
 27 Motion. Opp. at 5.

28

1 While Defendant certainly provided a self-serving description of the Canadian court's order
 2 from October 4, 2022, what is noticeably absent from Defendant's discussion of the October 4, 2022
 3 order is the reason the Canadian court denied the application. One suspects that this information is
 4 missing from the Opposition because the Canadian court found the that the application was
 5 substantively meritorious. However, because of a procedural issue, the Canadian court denied the
 6 application for injunctive relief. Indeed, the court stated, "If Cash Cloud had provided the
 7 undertaking under Rule 40.03, I would have ordered a time restricted injunction for sixty (60) days
 8 from the date of this decision." *See* Defendant's Exhibit A at ¶ 61. Remarkably, but perhaps not
 9 unexpectedly, Defendant fails to provide this critical detail in its Opposition.

10 Defendant's efforts to solicit Cash Cloud's hosts and to make false statements about Cash
 11 Cloud to its exclusive hosts are tortious and constitute a violation of the automatic bankruptcy stay.
 12 The Court should grant the Motion and issue a temporary restraining order against Defendant.

13 **II. THE COURT SHOULD ISSUE THE REQUESTED TEMPORARY RESTRAINING
 14 ORDER**

15 A. **Cash Cloud Has Established A Likelihood of Success on the Merits of the Claim
 16 for Violation of the Automatic Stay**

17 In working to have Cash Cloud's hosts switch from hosting Cash Cloud's kiosk to hosting
 18 Defendant's kiosks, Defendant is violating the automatic stay as such conduct constitutes an "act to
 19 obtain possession of property of the estate or of property from the estate or to exercise control over
 20 property of the estate" § 362(a)(3).

21 In its Opposition, Defendant does not dispute (and therefore concedes) that Cash Cloud's
 22 executory contracts with its hosts (which contain, *inter alia*, exclusivity provisions in favor of Cash
 23 Cloud), constitute property of the estate which is protected by the automatic stay. *See, e.g., In re
 24 Lehman Bros. Holdings Inc.*, 544 B.R. 16, 40 (Bankr. S.D.N.Y. 2015) ("A debtor's security interest
 25 in collateral or a debtor's interest in an executory contract as of the commencement of the case
 26 comprises property of the estate."); *In re Family Health Services, Inc.*, 105 B.R. 937, 942-43 (Bankr.
 27 C.D. Cal. 1989) ("the debtor's good will and its contracts with subscribers and members are so

1 essential to the survival of the debtor that they constitute property of the estate as that term is defined
 2 in Bankruptcy Code section 541(a)(1)”.

3 Rather, Defendant argues in its Opposition that “[i]nfluencing a customer to opt for a
 4 competitor’s services over a debtor’s service through advertisements, false or otherwise, is not an act
 5 of control over the bankruptcy estate’s property,” citing to *In re Windstream Holdings, Inc.*, 2022 WL
 6 5245633, at *7-9 (S.D.N.Y. Oct. 6, 2022). *See* Opp. at 10. Notwithstanding that Defendant’s actions
 7 at issue do not constitute “advertising,” Defendant’s reliance on *Windstream* is misguided.

8 The critical distinction between the debtor in *Windstream* and Cash Cloud is that Cash Cloud’s
 9 contracts with its hosts contain exclusivity provisions which prohibit the host from using any
 10 cryptocurrency kiosk provider other than Cash Cloud. *See* McAlary Decl. at ¶ 11. That the contracts
 11 are exclusive to Cash Cloud is dispositive to this issue as Defendant’s attempts to interfere with such
 12 exclusive contracts constitutes a violation of the automatic stay. Indeed, the court in *Windstream* made
 13 multiple references to the importance of exclusive contracts in deciding whether the automatic stay
 14 had been violated, stating as follows:

15 Rather, absent a contract that bound the customers to purchase
 16 **exclusively** from the debtor or required those customers to purchase
 17 specific quantities of products, the former employees did not breach
 the stay by competing for those customers (citing *In re Golden*
Distrib., Ltd., 122 B.R. 15, 20 (Bankr. S.D.N.Y. 1990))...

18 These acts, through which the competitor actively sought to convert
 19 or override **exclusive** term contracts between debtors and their
 20 customers, by using the debtors’ customer list and holding itself out
 as the proper and authorized servicer of those accounts, are properly
 21 characterized as attempts to exercise control (citing *In re Alert*
Holdings, 148 B.R. 194, 198 (Bankr. S.D.N.Y. 1992)).

22 *In re Windstream Holdings, Inc.*, 2022 WL 5245633, at *8.

23 Understanding the importance of the exclusive nature of Cash Cloud’s host contracts, in its
 24 initial Motion, Cash Cloud cited to *In re Sherlock Homes of W.N.Y., Inc.*, 246 B.R. 19, 24-26 (Bankr.
 25 W.D.N.Y. 2000)—a case in which the court found that the interference with exclusive contract rights
 26 constituted a violation of the automatic bankruptcy stay. *See id.* at 26 (“With respect to liability under
 27 the second cause of action for post-petition interference with contract rights and the fourth causes of
 28 action for violation of the automatic bankruptcy stay, the court will grant summary judgment to the

1 trustee as against each of the defendants...”). Tellingly, just as Defendant does not acknowledge the
 2 language in *Windstream* which holds that interference with exclusive contracts constitutes a violation
 3 of the bankruptcy stay, Defendant does not address or otherwise mention the *Sherlock Holmes*
 4 decision in its Opposition. Because Defendant is actively interfering with Cash Cloud’s exclusive
 5 contracts, the Court should find that Cash Cloud has established a likelihood of success on its claim
 6 for violation of the automatic bankruptcy stay.

7 **B. Cash Cloud Has Established A Likelihood of Success on the Merits of the Claim**
 8 **for Tortious Interference With Contractual Relations**

9 In an action for intentional interference with contractual relations, a plaintiff must establish:
 10 (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts
 11 intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and
 12 (5) resulting damage. *See WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 750 F. Supp. 2d 1180,
 13 1195 (D. Nev. 2010) (citing *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267
 14 (2003)). Defendant does not dispute that Cash Cloud has established the first three elements of the
 15 claim: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; and (3)
 16 intentional acts intended or designed to disrupt the contractual relationship. This concession is
 17 critical as the principal inquiry is whether the plaintiff proved that defendant intentionally acted to
 18 disrupt the plaintiff’s contractual relationships. As stated in *Gonzales v. Shotgun Nevada*
 19 *Investments, LLC*, 2:13-cv-00931-RCJ, 2014 WL 936737, at *4 (D. Nev. Mar. 10, 2014), “At the
 20 heart of an intentional interference action is whether Plaintiff has proved intentional acts by
 21 Defendant intended or designed to disrupt Plaintiff’s contractual relations....” *Id.* As detailed below,
 22 Defendant’s concession of this element is nigh dispositive for the purposes of deciding the Motion.

23 Defendant only disputes the “actual disruption of the contact” and resulting damages elements
 24 of the claim. *See Opp.* at 7-8. Defendant claims that it has not caused any of Cash Cloud’s hosts to
 25 switch from Cash Cloud to Defendant. *Id.* By contrast, Mr. McAlary has testified that there have
 26 been disrupted/terminated contracts by Cash Cloud’s hosts and that based upon the information to
 27 date, these terminations were induced by Defendant. *See* McAlary Decl. at ¶¶ 25, 28.
 28

1 This dispute of fact between the parties is of no assistance to Defendant. Indeed, where there
 2 exist serious factual disputes as to the merits, injunctive relief is appropriate to preserve the status
 3 quo. The Court in *SFR Investments Pool I, LLC v. PHH Mortgage Corp.*, No. 2:22-cv-
 4 00507RFBEJY, 2022 WL 1288751, at *1 (D. Nev. Apr. 29, 2022) held the same, explaining:

5 **The Court finds that there are unresolved factual disputes,**
 6 **which raise serious questions going to the merits of this case.**
 7 Specifically, the Court finds that the timing as to when the
 8 underlying note became wholly due pursuant to its own terms could
 9 be dispositive as to the respective positions of each party. The
 10 determination of this factual dispute as well as the dispute regarding
 the deceleration of the note cannot be resolved upon the current
 record before the Court. **Until these issues are resolved, the Court**
 finds that it must issue an injunction to preserve the status quo.

11 *Id.* (emphasis supplied).

12 Moreover, for the purposes of granting injunctive relief, actual damages are not necessary
 13 before the Court may issue a temporary restraining order. As stated above, “[r]equiring a showing of
 14 actual injury would defeat the purpose of the preliminary injunction, which is to prevent an injury
 15 from occurring.” *Shell Offshore*, 709 F.3d at 1288.

16 This is why Defendant’s concession that it acted intentionally with the purpose of causing
 17 disruption of Cash Cloud’s host contracts is significant—the Court need not wait for formal breach
 18 of a host contract in order to enjoin tortious interference. For example, in *Fleetwash, Inc. v. Hall*, No.
 19 3:17-cv-00170-MMD-VPC, 2017 WL 2193239, at *1 (D. Nev. May 18, 2017), the court enjoined the
 20 defendants from making false statements designed to interfere with the plaintiff’s contracts, holding:

21 Hall made false statements intending to interfere with Plaintiff’s
 22 contracts with customers and prospective business, which has
 23 harmed Plaintiff’s relationships with its customers. Mr. Carlton’s
 24 testimony demonstrated that Hall engaged in intentional conduct
 25 designed to interfere with Plaintiff’s contracts and business. Absent
 preliminary relief, Defendants’ conduct will result in irreparable
 harm to Plaintiff in the form of losing customers and reputational
 harm that monetary damage alone cannot address if MTW is
 allowed to benefit.

26 *Id.*

1 As such, notwithstanding the dispute over whether a Cash Cloud host has already switched to
 2 Defendant, the Court should issue a temporary restraining order to prevent Defendant from continuing
 3 to act improperly and in violation of the automatic stay to prevent further erosion of Cash Cloud's
 4 goodwill, reputation, and customer/host relationships.

5 **C. Cash Cloud Is Likely to Be Irreparably Harmed Unless a Temporary**
 6 **Restraining Order is Issued.**

7 Cash Cloud's contractual relationships with its hosts are essential to its business as they
 8 establish the right for Cash Cloud to operate its kiosks at each of its locations. *See* McAlary Decl.
 9 at ¶ 6. Demonstrating the importance of these contracts is Cash Cloud's repeated negotiation for the
 10 exclusive right to operate the kiosks. *Id.* at ¶ 11. Should Defendant be able to continue its course of
 11 conduct in improperly soliciting Cash Cloud's hosts, Cash Cloud will suffer irreparable harm. Cash
 12 Cloud has invested substantial time and resources in building and cultivating its relationships with
 13 its hosts, the value of which cannot be reduced to a dollar figure and the loss of which would
 14 represent irreparable harm to Cash Cloud. *Id.* at ¶ 26. Defendant's false statements concerning Cash
 15 Cloud are harmful and dangerous to Cash Cloud's business, its goodwill, and its customer
 16 relationships. *Id.* at ¶ 22. Indeed, and by way of example only, Defendant's false statement that
 17 Cash Cloud is not sending customers their purchased digital currency is particularly harmful as it not
 18 only puts Cash Cloud's host relationships at risk, but also puts end-user relationships and Cash
 19 Cloud's goodwill at risk. *Id.* at ¶ 23. Furthermore, Defendant has already caused interruption of the
 20 contractual relationship between Cash Cloud and its hosts. *Id.* at ¶ 25, 28. Based on certain post-
 21 petition termination of host contract by certain Cash Cloud host, Defendant has persuaded hosts to
 22 switch from hosting Cash Cloud machines to Defendant's machines. *Id.* at ¶ 25.

23 Each of these effects represent irreparable harm for which a TRO should be issued. *See, e.g.,*
 24 *Abdou v. Davita, Inc.*, 734 Fed. Appx. 506, 506 (9th Cir. 2018) (affirming preliminary injunction,
 25 holding, “[d]amage to a company's goodwill and reputation can constitute irreparable harm because
 26 this sort of harm is difficult to measure.”); *Fleetwash, Inc.*, 2017 WL 2193239, at *2 (“Defendants’
 27 conduct will result in irreparable harm to Plaintiff in the form of losing customers and reputational
 28 harm that monetary damage alone cannot address if MTW is allowed to benefit.”); *INAG, Inc. v.*

1 *Richar, Inc.*, No. 2:16-cv-722, 2017 WL 4273103, at *5 (D. Nev. September 25, 2017) (“The Court
 2 finds that absent an injunction there would be irreparable harm to the professional reputation and
 3 prospective professional relationships of Richar, Inc.”).

4 In its Opposition, Defendant does not dispute the harmful effects Defendant’s statements
 5 have had on Cash Cloud’s goodwill, reputation, and customer/host relationships. Nor can it. False
 6 statements about a party’s business operations adversely affect that party’s goodwill and justify the
 7 issuance of injunctive relief. *See, e.g., Recovery Hous. Acad. LLC v. Candelario*, 562 F. Supp. 3d
 8 333, 342 (D. Ariz. 2022) (granting temporary restraining order, stating, “Defendants’ false
 9 statements in the two emails likely caused damage to the reputation of Plaintiffs’ business because
 10 it made it sound like it was Plaintiffs’ fault that the December event was cancelled.”).

11 Instead, in the Opposition, Defendant repeats its problematic claim that Cash Cloud has not
 12 demonstrated that a specific host agreement has already been terminated and, without any further
 13 analysis, argues that “monetary damages for the alleged contractual interference would be a
 14 sufficient remedy.” Opp. at 9 n. 6. Defendant is wrong on both accounts.

15 First, as referenced above, the Court does not have to wait for a breach of contract to occur
 16 in order to find that irreparable harm would be caused without the issuance of injunctive relief. The
 17 Ninth Circuit’s affirmance of the preliminary injunction in *Abdou* confirms the same. There, the
 18 Ninth Circuit held:

19 Although Abdou/Bacchus did not actually launch a competing entity
 20 during the Restricted Period, their discussions with the Restricted
 21 Parties clearly were intended to lay the groundwork for such a
 22 launch. Allowing them to take advantage of this preparation, which
 23 arguably violated the terms of the noncompetes, is likely to cause
 DaVita precisely the type of irreparable harm that noncompete
 agreements are intended to prevent.

24 *Id.*, 734 Fed. Appx. at 507.

25 Second, the harm done to Cash Cloud’s goodwill, reputation, customer and host relationships
 26 caused by Defendant’s repeated false statements and solicitation of its exclusive hosts is not readily
 27 compensable through money damages alone. As explained by Mr. McAlary, Cash Cloud has
 28 invested substantial time and resources in building and cultivating its relationships with its hosts, the

1 value of which cannot be reduced to a dollar figure and the loss of which would represent irreparable
 2 harm to Cash Cloud. McAlary Decl. at ¶ 26. The prevailing authority supports Mr. McAlary. *See,*
 3 *e.g.*, *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.
 4 1991) (“intangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as
 5 irreparable harm... The district court did not abuse its discretion by finding a possibility of
 6 irreparable harm to RAC. The advertising efforts and goodwill that RAC sought to protect are similar
 7 to the recruitment efforts and goodwill in *Regents*. The district court focused on these intangible
 8 injuries in concluding that RAC’s damages would be difficult to valuate and thus constituted possible
 9 irreparable harm...”); *Las Vegas Sands Corp. v. Fan Yu Ming*, 360 F. Supp. 3d 1072, 1079 (D. Nev.
 10 2019) (“evidence of loss of goodwill is sufficient”); *Fleetwash, Inc.*, 2017 WL 2193239, at *2; *INAG*,
 11 2017 WL 4273103, at *5. Accordingly, the Court should find that without a TRO, Cash Cloud is
 12 likely to suffer irreparable harm. The Motion should be granted.

13 **D. The Balance of Hardships Weighs Heavily in Cash Cloud’s Favor.**

14 Before issuing a temporary restraining order, a court must weigh “the competing claims of
 15 injury and ... consider the effect on each party of the granting or withholding of the requested relief.”
 16 *Las Vegas Sands*, 360 F. Supp. 3d at 1081 (quoting *Amoco Prod. Co. v. Village of Gambell, AK*, 480
 17 U.S. 531, 542 (1987)). As explained above, without a temporary restraining order that would
 18 prohibit Defendant from continuing to solicit Cash Cloud’s hosts (through the use of false statements
 19 or otherwise), Cash Cloud loses the benefit of the automatic stay and Cash Cloud’s valuable
 20 exclusive contracts with its hosts. By contrast, and as stated in the Motion, “Defendant would not
 21 be put at risk by the issuance of a temporary restraining order.” Mot. at 15. Importantly, Defendant
 22 does not dispute that it would not be put at risk by the issuance of a TRO. As such, the Court should
 23 find that the balance of hardships weighs heavily in favor of issuing a TRO.

24 **E. The Public Interest Supports Cash Cloud’s Request for Injunctive Relief.**

25 The fourth factor, the public interest, also supports granting a temporary restraining order.
 26 Indeed, the authority is replete with holdings that injunctions designed to prevent interference with
 27 contract are in the public interest. *See, e.g.*, *Piatelli Co., Inc. v. Chambers*, No. 3:12-cv-225-RCJ-
 28 WGC, 2012 WL 1696899, at *5 (D. Nev. May 11, 2012) (“The injunction would also be in the public

1 interest as it enforces contractual rights, prevents interference with contractual relations...”);
 2 *Compass Bank v. Hartley*, 430 F. Supp. 2d 973, 983 (D. Ariz. 2006) (“the public interest is served by
 3 protecting a company’s right to proprietary information, business operations, and contractual
 4 rights.”).

5 Similarly, the public interest is implicated where, as here, a TRO is being sought to enforce
 6 the automatic bankruptcy stay. In *In re Fabtech Indus., Inc.*, No. ADV.10-01294-BB, 2010 WL
 7 6452908, at *6 (B.A.P. 9th Cir. July 19, 2010), the Ninth Circuit affirmed the bankruptcy court’s
 8 injunction order, stating, “[t]he public interest in successful reorganization is significant.” *Id.* Where,
 9 as here, the affected parties would include not just Cash Cloud and the Defendant, but also Cash
 10 Cloud’s creditors, the public interest factor is not “neutral” as Defendant suggests in the Opposition.
 11 See, e.g., *In re PTI Holding Corp.*, 346 B.R. 820, 832 (Bankr. D. Nev. 2006) (“When exercising the
 12 formidable power to issue injunctions, a court must always consider the public interest. Here, an
 13 injunction raises several public interest issues: the interest in successful reorganizations...”); *In re
 14 Lazarus Burman Associates*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) (“the public interest can only
 15 be further served by the issuance of an injunction in these proceedings. The public interest, in the
 16 context of a bankruptcy proceeding, is in promoting a successful reorganization.”). Therefore, this
 17 fourth factor supports the issuance of a temporary restraining order.

18 **F. The Court Should Overrule Defendant’s Hearsay and Foundation Objections**

19 In granting the requested temporary restraining order, the Court should overrule Defendant’s
 20 perfunctory objections contained in footnote 3 of the Opposition. First, Defendant objects to Exhibit
 21 3 as hearsay. *See* Opp. at 2 n. 3. The objection should be overruled. Exhibit 3, like the other emails
 22 attached to the Motion, is an email from Defendant’s agent made within the scope of his agency and
 23 is thus, not hearsay. Under FRE 801(d)(2)(D), a statement is not hearsay when the “statement is
 24 offered against an opposing party and was made by the party’s agent or employee on a matter within
 25 the scope of that relationship and while it existed.” *Id.* In this case, Landon Thomas, Defendant’s
 26 Director of Business Development, made the statements at issue to Royal Farms while Mr. Thomas
 27 was acting within the scope of his agency for Defendant. As such, Exhibit 3 is, by definition, not
 28 hearsay. However, to the extent that the Court construes the email as hearsay (which it should not),

1 the Court may consider hearsay evidence in the context of a temporary restraining order, particularly
 2 where the need for a quick determination “makes it difficult to obtain affidavits from persons who
 3 would be competent to testify at trial.” *Flynt Distr. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir.
 4 1984).

5 Additionally, Defendant objects that Mr. McAlary does not have personal knowledge that
 6 Exhibit 3 is accurate. *See Opp.* at 2 n. 3. Once again, the objection should be overruled as personal
 7 knowledge of that email is not required when seeking a temporary restraining order. *See id.*
 8 Moreover, Defendant, who would have personal knowledge as to the email’s accuracy, has failed to
 9 dispute the same with any evidence, competent or otherwise. *See Republic of the Philippines v.*
 10 *Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988) (granting injunctive relief and noting, “[n]o affidavits
 11 countering the inference were presented by the [party opposing the requested relief]”).

12 Finally, Defendant further objects to four paragraphs within Mr. McAlary’s eight-page
 13 declaration as they are made “upon information and belief.” *See Opp.* at 2 n. 3. This objection
 14 should likewise be overruled. As the Court knows, “The trial court may give even inadmissible
 15 evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial.
 16 Consequently, information and belief declarations may be considered in this context. Thus, such
 17 issues properly go to weight rather than admissibility.” *BakeMark, LLC v. Navarro*, No.
 18 LACV2102499JAKAGPX, 2021 WL 2497934, at *5 (C.D. Cal. Apr. 24, 2021); *Language Line*
 19 *Services, Inc. v. Language Services Associates, LLC*, No. C 10-02605 JW, 2010 WL 2764714, at *4
 20 n. 5 (N.D. Cal. July 13, 2010) (granting a preliminary injunction, holding, “the Court has wide
 21 discretion to consider sworn testimony made on information and belief when evaluating a motion
 22 for preliminary injunction.”).

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1 **III. CONCLUSION**

2 Based upon the foregoing, Cash Cloud respectfully requests that the Court find that a
3 temporary restraining order is necessary and should be issued to enjoin Defendant from violating the
4 automatic stay by soliciting Cash Cloud's hosts (through the use of false statements or otherwise).

5 Dated this 17th day of April, 2023.

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